

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREEPLAY MUSIC, LLC,	:	
	:	
Plaintiff,	:	13 Civ. 5235 (JPO)
	:	
-v-	:	
	:	
	:	<u>ORDER</u>
MAKITA U.S.A., INC.; MAKITA CORP.,	:	
	:	
Defendants.	:	
	:	
-----X	:	

J. PAUL OETKEN, District Judge:

The parties have submitted letters regarding Defendant Makita USA's motion to dismiss the Third Amended Complaint. Plaintiff's arguments should be made in an opposition brief. The request for sanctions is denied.

As Plaintiff correctly notes, Makita USA has moved to dismiss only the fourth count of the complaint—this count is asserted only against Makita Corporation, a separate Defendant whose response to the Third Amended Complaint is due on April 4, 2014. Whether Makita USA has standing to seek dismissal of that count will be addressed in the briefing on the motion. But there is a separate question: whether Makita USA's time to answer is postponed by the filing of its motion. The usual rule is that a motion under Rule 12 extends the deadline for the moving party to answer the complaint. This rule should not apply where a defendant files a motion to dismiss without addressing *any* of the counts asserted against it. Accordingly, it is hereby ordered that Makita USA's answer to counts one and two of the Third Amended Complaint (the only counts asserted against Makita USA) shall be filed by April 4, 2014.

SO ORDERED.

Dated: New York, New York
March 13, 2014



J. PAUL OETKEN
United States District Judge